

BILL LOCKYER, Attorney General  
of the State of California  
ADRIAN K. PANTON, State Bar No. 64459  
Supervising Deputy Attorney General  
California Department of Justice  
300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 897-6593  
Facsimile: (213) 897-9395

Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-1983

MAGDI F. GIRGIS  
426 E. Hullett Street, Apt. C  
Long Beach, California 90805

**A C C U S A T I O N**

Respiratory Care Practitioner License No. 17247

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about September 6, 1994, the Respiratory Care Board issued Respiratory Care Practitioner License Number 17247 to Magdi F. Girgis (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references

are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“ . . .

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction. . . .”

7. Section 3752 of the Code states:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.”

8. Section 490 of the Code states:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or

1 duties of the business or profession for which the license was issued. A conviction within  
2 the meaning of this section means a plea or verdict of guilty or a conviction following a  
3 plea of nolo contendere. Any action which a board is permitted to take following the  
4 establishment of a conviction may be taken when the time for appeal has elapsed, or the  
5 judgment of conviction has been affirmed on appeal, or when an order granting probation  
6 is made suspending the imposition of sentence, irrespective of a subsequent order under the  
7 provisions of Section 1203.4 of the Penal Code.”

8 9. Section 3752.5 of the Code states:

9 “For purposes of Division 1.5 (commencing with Section 475), and this chapter  
10 [the Respiratory Care Practice Act], a crime involving bodily injury or attempted bodily  
11 injury shall be considered a crime substantially related to the qualifications, functions, or  
12 duties of a respiratory care practitioner.”

13 10. California Code of Regulations, Title 16, section 1399.370, states:

14 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
15 shall be considered to be substantially related to the qualifications, functions or duties of a  
16 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
17 perform the functions authorized by his or her license or in a manner inconsistent with the  
18 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
19 those involving the following:

20 “ . . .

21 “ (d) Conviction of a crime involving harassment or stalking as defined by the  
22 Penal Code. . . .”

### 23 COST RECOVERY

24 11. Section 3753.5, subdivision (a) of the Code states:

25 "In any order issued in resolution of a disciplinary proceeding before the board, the  
26 board or the administrative law judge may direct any practitioner or applicant found to have  
27 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
28 investigation and prosecution of the case."

1                   12.     Section 3753.7 of the Code states:

2                   "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
3 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
4 administrative, filing, and service fees."

5                   13.     Section 3753.1, subdivision (a) of the Code states:

6                   "An administrative disciplinary decision imposing terms of probation may include,  
7 among other things, a requirement that the licensee-probationer pay the monetary costs associated  
8 with monitoring the probation."

9                                   CAUSE FOR DISCIPLINE

10                                   (Conviction of a Crime)

11                   14.     Respondent is subject to disciplinary action under sections 3750,  
12 subdivision (d), 3752, 490, and 3752.5 of the Code, and California Code of Regulations, Title 16,  
13 section 1399.370, subdivision (d), in that he was convicted of a crime substantially related to the  
14 qualifications, functions or duties of a respiratory care practitioner. The circumstances are as  
15 follows:

16                               A.     On February 5, 2004, a complaint was filed against respondent in a  
17 criminal proceeding entitled *People v. Magdi Girgis*, in Superior Court, Orange County,  
18 Case Number 04WF0321, charging him with domestic battery with corporal injury, (Count  
19 1), a violation of Penal Code section 273.5(a), a felony. On August 5, 2004, an  
20 information was filed. On October 22, 2004, a first amended information was filed  
21 charging respondent with violation of a protective order (Count 2), a violation of Penal  
22 Code section 166(c)(1), a misdemeanor, and dissuading a witness from prosecuting a crime  
23 (Count 3), a violation of Penal Code section 136.1(b)(2), a felony, with the conduct  
24 enhancement of Penal Code section 12022.1(b), being released from custody and on bail at  
25 the time of the commission of Count 3.

26                               B.     On February 17, 2005, respondent was convicted by a plea of guilty  
27 to the crime of domestic battery with corporal injury (Count 1), and dissuading a witness  
28 from prosecuting a crime (Count 3), with the enhancement of Penal Code section

1 12022.1(b).

2 C. On or about March 18, 2005, respondent was placed on probation  
3 for five years, ordered to serve 365 days in county jail, pay fines of \$220.00 and domestic  
4 violence fees of \$1,500.00, and complete a batterer's treatment program.

5 D. The facts and circumstances surrounding this offense are as follows:

6 On or about February 3, 2004, a Westminster police officer was dispatched  
7 to Fountain Valley Hospital Emergency Room in reference to respondent's wife, a possible  
8 victim of domestic violence. She stated that during an argument with respondent, he  
9 became very angry and punched her on the left side of her face with his right closed fist.  
10 About three hours later, her sons took her to the hospital. She sustained a bloody nose, a  
11 black eye, a bruised lip, and a fracture that extended from the bridge to the left side of her  
12 nose. Respondent was arrested for spousal abuse. The police officer obtained an  
13 emergency protective order for respondent's wife.

14 On February 17, 2004, a police officer interviewed respondent's wife again.  
15 She told the officer that respondent had battered her and their sons many times in the past  
16 and she was afraid of his violent behavior.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 PRAYER

1                   WHEREFORE, Complainant requests that a hearing be held on the matters herein  
2 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

3                   1.       Revoking or suspending Respiratory Care Practitioner License Number  
4 17247 issued to Magdi F. Girgis.

5                   2.       Ordering Madgi F. Girgis to pay the Respiratory Care Board the costs of  
6 the investigation and enforcement of this case, and if placed on probation, the costs of probation  
7 monitoring;

8                   3.       Taking such other and further action as deemed necessary and proper.

9 DATED: June 29, 2005

10  
11  
12                                   Original signed by Liane Zimmerman for:  
13                                   STEPHANIE NUNEZ  
14                                   Executive Officer  
15                                   Respiratory Care Board of California  
16                                   Department of Consumer Affairs  
17                                   State of California  
18                                   Complainant  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28